

PT 96-19

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use
Grounds For Burying The Dead

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

CHRIST LUTHERAN CHURCH OF)	
PEORIA & TRINITY EVANGELICAL)	
LUTHERAN CONGREGATION U.A.C.)	
Applicant)	Docket # 94-72-208
)	Parcel Index #s17-13-251-003
v.)	17-13-251-002
)	George H. Nafziger
THE DEPARTMENT OF REVENUE)	Administrative Law Judge
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter concerns Peoria County parcels numbered 17-13-251-003 and 17-13-251-002 for the 1994 assessment year.

The Illinois Department of Revenue (hereinafter referred to as the "Department") on June 29, 1995 denied the exemption of both of the foregoing parcels for the reason that they were not in exempt use during 1994.

The issues in this matter include first, whether the Christ Lutheran Church of Peoria and Trinity Evangelical Lutheran Congregation U.A.C. (hereinafter referred to as the "Applicant"), owned the parcels here in issue during the 1994 assessment year. The second issue is whether this applicant was a cemetery during the 1994 assessment year. The final issue is whether the applicant was either preparing these parcels for use for cemetery purposes or using these parcels as a part of a cemetery or grounds for burying the dead during the 1994 assessment year. Following a review of the file in this matter and the documents filed by the applicant, it is determined that the applicant owned these parcels during the period December 9, 1994, through December 31, 1994. It

is also determined that the applicant was a cemetery during the 1994 assessment year. Finally, it is determined that the applicant was preparing these parcels for cemetery use during the period December 9, 1994, through December 31, 1994.

Findings of Fact:

1. On December 30, 1994, the Peoria County Board of Review transmitted an Application for Property Tax Exemption to Board of Review, concerning these parcels for the 1994 assessment year, to the Department.

2. On June 29, 1995, the Department notified the applicant that it was denying the exemption of these parcels for the 1994 assessment year.

3. On July 18, 1995, the applicant's attorney requested a formal hearing in the matter.

4. On August 3, 1995, the applicant's attorney by letter, requested an office disposition in this matter.

5. The applicant acquired these parcels by a quitclaim deed dated December 9, 1994.

6. As soon as the applicant acquired these parcels, it hired Roy Rosenbaum to clean them up. He proceeded to remove between 30 and 40 truckloads of garbage, took down some old rusty fencing and some scrub trees and proceeded to do some leveling of the ground.

7. During 1995, the regular cemetery employees have proceeded to remove some of the scrub trees on these parcels as well as doing some filling and leveling of the dirt on these parcels.

8. Also during 1995, the remainder of the basement and the foundation of the former tavern, previously located on theses parcels, were removed.

9. During October and November of 1995, these parcels were platted for grave sites.

10. I take Administrative Notice of the Department's determinations in docket numbers 90-72-117 and 90-72-118 in which the Department exempted certain parcels owned by this applicant and used for cemetery purposes.

11. Based on the foregoing, I find that the applicant owned these parcels during the period December 9, 1994, through December 31, 1994.

12. I further find that the applicant was a cemetery during the 1994 assessment year.

13. Finally, I find that the applicant was preparing these parcels for cemetery use during the period December 9, 1994 through December 31, 1994.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-45 provides as follows:

All property used exclusively as graveyards or grounds for burying the dead is exempt.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

I conclude that the findings of fact in this matter establish that the applicant owned these parcels during the period December 9, 1994, through December 31, 1994. I further conclude that the Department has determined that the applicant is a cemetery or grounds for burying the dead.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

I therefore conclude that the applicant owned these parcels and was in the process of adapting these parcels for exempt use during the period December 9, 1994, through December 31, 1994.

Consequently, I recommend that Peoria County parcels numbered 17-13-251-003 and 17-13-251-002 be exempt from real estate tax for 6 percent of the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July ,1996